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Filing date: **03/01/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91175334
Party	Defendant AMCOAT INDUSTRIES, INC. AMCOAT INDUSTRIES, INC. 115 BAILEY DRIVE NICEVILLE, FL 32578 chris@daylawfirm.com
Correspondence Address	Robert J. Veal Smith, Gambrell & Russell, LLP 1230 Peachtree Street, N.E. Atlanta, GA 30309 UNITED STATES rjveal@sgrlaw.com, jwhitt@sgrlaw.com
Submission	Answer
Filer's Name	Robert J. Veal
Filer's e-mail	rjveal@sgrlaw.com
Signature	/s/Robert J. Veal
Date	03/01/2007
Attachments	AmCoat Answer with Exhibit A.pdf (27 pages)(935877 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Rhino Linings USA, Inc.)	
Opposer,)	
)	
)	
v.)	Opposition No. 91175334
)	
)	
AmCoat Industries, Inc.)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

AmCoat Industries, Inc., through its undersigned attorney, hereby responds to the Notice of Opposition filed by Rhino Linings USA, Inc. and states for its Answer, with each numbered paragraph of the answer corresponding to the numbered paragraphs of the Notice, as follows:

1. Applicant is without knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 1 and therefore denies same.
2. Applicant admits that it filed an application for "Rhino Shield" but denies that Opposer is the senior user in this matter.
3. Applicant is without knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 3 and therefore denies same.
4. Applicant is without knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 4 and therefore denies same. Applicant also denies that any purported foreign registrations are irrelevant to this proceeding.
5. Applicant is without knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 5 and therefore denies same.
6. Applicant is without knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 6 and therefore denies same. Applicant specifically denies that the term

“Rhino” has become synonymous with surface coatings in any sense other than as a generic term.

7. Applicant admits that its goods include exterior coatings for use on buildings. Applicant is without knowledge sufficient to form a belief as to the truth or falsity of the allegations of the remainder of paragraph 7 and therefore deny same.

8. Denied.

Wherefore, Applicant requests that this Opposition be dismissed.

APPLICANT’S AFFIRMATIVE DEFENSES

9. The term Rhino is generic and Opposer in its pleadings has admitted such genericness, asserting that the term “Rhino” has become synonymous with “surface coatings in a variety of fields and industries” rather than indicating a source of coatings for use in such industries.

10. The term “Rhino” is commonly used in trademarks, registrations and applications, and, therefore, is entitled only to a narrow band of protection which does not include protection against registration of Applicant’s mark. Opposer is aware of the common usage of Rhino by others in the marketplace and has admitted that Rhino is entitled to limited protection and has asserted that “The addition of another word to the commonly used RHINO element generally has greater meaning in determining whether the marks are similar...” as shown in Exhibit A, Opposer’s argument to the United States Trademark Office in response to refusal to register RHINO GARAGE in Serial No. 78/832,237.

11. Upon information and belief Opposer has repeatedly asserted to the United States Trademark Office that “The addition of another word to the commonly used RHINO element generally has greater meaning in determining whether the marks are similar and, therefore, is

estopped to argue for a scope of protection broad enough to prevent registration of Applicant's mark RHINO SHIELD.

12. There is no likelihood of confusion presented by Applicant's mark which uses the commonly used term RHINO and the term SHIELD, which are clearly distinguishable from Opposer's use of the common term RHINO and the descriptive terms LININGS or TUFF or SHINE. Further, the goods of Applicant and Opposer are significantly different having different uses. Opposer's goods are wear resistant and traction enhancing coatings applied to surfaces subjected to high wear conditions such as horse trailers, van floors, and truck beds. Applicant's goods are gas permeable coatings applied to the exterior of buildings, primarily residential buildings, to protect the exterior as an alternative to painting the building with conventional paint. Applicant's products are not traction enhancing coatings for such uses as Opposer sells its products. Accordingly, Applicant's goods are sold through different channels of trade, with different methods of advertising, to different customers who are highly sophisticated and informed about their purchasing decisions. Specifically, Applicant's primary source of business leads is from home shows, a venue in which, upon information and belief, Opposer does not advertise. The second largest source of business is through Applicant's website, which requires a customer to seek a residential coating and follow up with respect to such a product. Applicant is aware of no instances of actual confusion which have arisen.

13. Opposer's claim is barred by laches and estoppel from now asserting its claim.

14. Opposer's claim is barred by unclean hands.

Applicant again asks that the Opposition be dismissed and the mark RHINO SHIELD be registered in due course.

Respectfully submitted this 1st day of March, 2007.

SMITH, GAMBRELL & RUSSELL, LLP

/s/ Robert J. Veal
Robert J. Veal

Smith, Gambrell & Russell, LLP
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Attorney for Applicant, AmCoat Industries, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Rhino Linings USA, Inc.)	
Opposer)	
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v.)	Opposition No. 91175334
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AmCoat Industries, Inc.)	
Applicant)	

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing *Answer to Notice of Opposition* upon counsel for Rhino Linings USA, Inc. by mailing a copy of same via U.S. Mail, properly addressed and postage prepaid, as follows:

Stacey Friends, Esq.
Ruberto, Israel & Weiner, PC
100 No. Washington Street
Boston, MA 02114

This 1st day of March, 2007.

/s/ Robert J. Veal
Robert J. Veal

Smith, Gambrell & Russell, LLP
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404-815-3765
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Attorney for Applicant, AmCoat Industries, Inc.

EXHIBIT A

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December 21, 2006

Via Express Mail – EV704233910US

BOX RESPONSES – NO FEE

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

RE: Applicant: Rhino Linings USA, Inc.

Mark: RHINO GARAGE

Application No.: 78/832,237

Gentlemen:

Enclosed for filing are the following:

1. Response & Amendment Under 37 C.F.R. § 2.62 and 2.71 for RHINO GARAGE, Serial No. 78/832,237;
2. Affidavit of James T. Holden;
3. Affidavit of Jonathan M. Robertson; and
4. Post card acknowledgment of filed Response & Amendment.

If there are any fees associated with this filing, you are hereby authorized to charge our USPTO Deposit Account No. 502843 in the name of Nelson Mullins Riley & Scarborough LLP.

Thank you for your attention in this matter.

Yours very truly,

NELSON MULLINS RILEY & SCARBOROUGH LLP



12-22-2006

U.S. Patent & TMO/TM Mail Rcpt Dt #72

Commissioner for Trademarks
December 21, 2006
Page 2



David A. Harlow
Attorney For Applicant

CERTIFICATE OF MAILING BY EXPRESS MAIL
"Express Mail" Mailing Label EV704233910US

I hereby certify that this correspondence is addressed to the Commissioner For Trademarks, P.O. Box 1451, Alexandria, Virginia 23313-1451, BOX RESPONSES - No FEE, and is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" service under 37 CFR 1.10 on the date noted below.

Nancy Childers
(Typed or printed name of person mailing paper or fee)

(Signature of person mailing paper or fee)
December 21, 2006
(Date of signature)

AMENDMENT

1. Please amend the identification of goods in International Class 20 to read as follows:

Polyurethane coated furniture for home storage use in garages, basements, utility rooms and storage sheds, namely shelving, cabinets and storage racks.

2. Please amend the Application by adding the following claim of ownership of prior registrations:

Applicant is the owner of U.S. Registrations Nos. 2,288,606, 2,752,078, 1,612,373 and others.

REMARKS

The Office Action states that registration of Applicant's RHINO GARAGE mark has been refused as to Class 20 only, under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the Applicant's mark, when used on or in connection with the identified goods, is confusingly similar to the marks shown in Registration No. 2,475,007 for RHINO EDGE (and Design) and Registration No. 1,698,407 for RHINO RACK, and application serial number 78/644,962 for RHINO RACKS SYSTEM (and Design). For the reasons set forth below, the Applicant respectfully submits there is no likelihood of confusion between these marks. Reconsideration is respectfully requested.

The Word "RHINO" Is Commonly Used In Trademark Registrations And Applications And Is Entitled To Only A Narrow Band Of Protection.

RHINO is a suggestive mark, which is commonly used to suggest characteristics of toughness and reliability. There are currently 235 live U.S. trademark registrations which contain the word RHINO in the mark. Given the common nature of the mark, and the

registration therefor, the mark is entitled to only a narrow band of protection. See Sears, Roebuck & Co. v. Hoffman, 258 F.2d 953, 119 U.S.P.Q. 137 (1958) ("It has been consistently held that trademarks will not ordinarily be held confusingly similar solely because each of them includes a [suggestive] word")

In particular, the Applicant would direct the Examining Attorney's attention to a number of RHINO marks which already co-exist as registrations, including, *inter alia*, the following:

Mark	Reg.No./ Ser. No.	Status	Goods/Services
RHINO	2483257	Registered	Non-metal elevating and supporting equipment, namely ladders
RHINO	2815608	Registered	Metal pallets
RHINO	2934246	Registered	Manually operated lawn and garden tools, namely, edgers, forks, hoes, rakes, post-hole diggers, scoops, shovels, spades and weeders
RHINO	2862435	Registered	Tubular goods handling system, namely steel frame with wood inserts having recesses for protecting tubulars during transport
RHINO	2291014	Registered	Commercial aluminum windows
RHINO	1654353	Registered	Bags and liners of plastic films and synthetic fabrics for shipping or storage of granular materials or liquids
RHINO P.A.C.K.	2729767	Registered	Pre-engineered foundation support

			kits comprised of non-metal footers, posts, post supports, and cantilever post supports for recreational and commercial wooden decks and auxiliary structures, namely benches, windows, sunporch type structures, and sunrooms and not comprised of work tables, work benches, industrial shelving, or storage racks
RHINO VAC	3133980	Registered	Central vacuum systems comprising suction nozzles, vacuum hoses, vacuum brushes, bags for use with vacuum cleaners, and parts and fittings for the foregoing; built-in vacuum systems comprising suction nozzles, vacuum hoses, vacuum brushes, bags for use with vacuum cleaners, and parts and fittings for the foregoing
RHINORAMPS	2134179	Registered	Portable vehicle service ramps made of lightweight, high strength polymeric
RHINO STEEL BUILDING SYSTEMS	2433912	Registered	Prefabricated steel buildings
RHINO ENCLOSURES	2255084	Registered	Metal enclosures for broadband and telecommunications equipment

RHINO BOND	3034485	Registered	Woodworking glue
RHINO DECK	2375954	Registered	Plastic building components for decks, namely deck planks, railing, spindles and post covers
RHINO BOARD	2729918	Registered	Backerboards and flooring underlayment for use in installing ceramic tile, natural stone and resilient flooring, and other tile, natural stone and resilient floor installation products
RHINO TUFF	2362746	Registered	Wood flooring
RHINOTECH USA	3013859	Registered	Sporting goods, namely harness packs and soft goods, namely paintball harness packs and paintball gear bags
RHINO RING	76/646795	Allowed	Tool holders, incorporating a bungee cord, for holding workers' hand tools
RHINO MOUNTS	78/697939	Approved for Publication	Metal mounting device for use on walls or ceilings to support audio-visual equipment, namely televisions, projection apparatus, flat panel screens, plasma display liquid crystal display panels, large-screen displays

As the foregoing examples illustrate, the addition of another word to the commonly used RHINO element generally has greater meaning in determining whether the marks are similar. Applicant respectfully submits that, in light of the narrow band of protection which

should be afforded to the RHINO element of RHINO marks, the addition of the word GARAGE should be given greater weight in analyzing the similarity of the marks and should result in further distinction of the two marks. Indeed, Applicant submits that the marks are not at all confusingly similar.

The Goods At Issue Are Dissimilar

In accordance with the standards established by In re E.I. DuPont de Nemours & Co., 476 F.2d 1356, 177 U.S.P.Q. 563 (C.C.P.A. 1973) the Trademark Manual of Examining Procedure ("TMEP") provides a number of factors for determining whether a likelihood of confusion exists between two marks. One important factor is "[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use." TMEP § 1207.01.

The goods in the Application are not similar to the goods in Registration No.

2,475,007. The RHINO EDGE (and Design) mark of Registration No. 2,475,007 is for "Hotel and motel furniture including desks, tables, end tables, coffee tables, and cabinets." These items are obviously traditional furniture, but selectively designed, produced and sold to the hotel and motel industry. Applicant's goods are furniture, namely shelving, cabinetry, and storage equipment that incorporates a polyurethane coating. While technically furniture, they are really specialized furniture for storage rather than room furnishings in a traditional sense. Moreover, Applicant's goods are goods for the home rather than commercial hotels and motels. Polyurethane covered storage racks and cabinets sold to homeowners are very different from the goods of the 2,475,007 registration.

The goods in the Application are not similar to the goods in Registration No.

1,698,407. The RHINO RACK mark of Registration No. 1,698,407 is for "work tables with

and without wheels, work benches, industrial shelving, large storage racks, and component parts therefor.” This mark is owned by Rapid Rack Industries, Inc. (“Rapid Rack”). A printed copy of Rapid Rack’s website, www.rapidrack.com, is attached hereto as part of Exhibit A. This website demonstrates the type of goods sold by the owner of the RHINO RACK mark, which include battery racks, tire racks, bulk storage shelving, mezzanine storage, mobile aisle systems, record and archive storage shelving, steel decking, and metal stairways. These goods are primarily constructed of metal, and are produced and marketed as large bulk storage systems for heavy-duty industrial use.

Applicant’s goods are much smaller, are manufactured differently, and provide for a very different type of storage. Specifically, Applicant’s goods are for installation in home garages, basements, utility rooms, and storage sheds, have a polyurethane coating, and provide storage for individual households. Thus, Applicant’s goods are dissimilar to the industrial goods of the 1,698,407 registration.

The goods in the Application are not similar to the goods in application serial number 78/644,962. The RHINO RACKS SYSTEM (and Design) of application serial number 78/644,962 is for “Audio/Video component racks, namely, shelves for stereo and video equipment.” These items undeniably serve a very specific function, as they include *only* shelves for stereo and video equipment. Audio-video component shelving is not for storage in the traditional sense, as it holds stereo and video equipment that is being used and/or displayed rather than stored. Such shelving is necessarily small and specialized and is limited to light-duty use. Further, audio-video component shelving has a very different structure and design than conventional shelves, racks, and cabinetry used for general, heavy-duty, bulk storage by homeowners.

Applicant's polyurethane covered shelves, racks, and cabinetry are clearly distinguishable from audio-video component shelving. Indeed, Applicant's goods are not designed to store or display audiovisual devices. Applicant's goods are for general storage by homeowners, and unlike the items described in the RHINO RACKS SYSTEM application, Applicant's goods include racks and cabinetry in addition to shelving. Applicant's shelves, racks, and cabinets are larger items for placement in garages, basements, utility rooms, and storage sheds. Their structure and design are consistent with heavy-duty, bulk storage use for the home. Thus, the Applicant's goods have a differing function, use, structure, size, and purpose than goods described in application serial number 78/644,962.

The Goods At Issue Are Sold In Different Trade Channels

Another of the DuPont factors used in determining whether a likelihood of confusion exists between two marks is "[t]he similarity or dissimilarity of established, likely-to-continue trade channels." TMEP § 1207.01. As discussed below, the fact that two marks are used in different channels of trade often indicates that there is no likelihood of confusion between the two marks, even when the marks are similar or identical.

Several courts have specifically stated that, when the goods or services in question do not compete or are marketed in different manners such that the public is not likely to assume the goods come from the same source, then even when two marks are identical, confusion is not likely. See Heartsprings Inc. v. Heartspring, Inc., 46 U.S.P.Q.2d 1481 (10th Cir. 1998); Electronic Design & Sales, Inc. v., Electronic Data Systems Corp., 21 U.S.P.Q.2d 1388 (Fed. Cir. 1992); Coherent Inc. v. Coherent Technologies, Inc., 935 F.2d 1122, 1125, 19 U.S.P.Q.2d 1146, (10th Cir. 1991); McGraw-Hill, Inc. v. Comstock Partners, Inc., 743 F.

Supp. 1029, 1034, 10 U.S.P.Q.2d 1599 (S.D.N.Y. 1990); Safeway Stores, Inc. v. Safeway Ins. Co., 657 F. Supp. 1307, 1315-16 (M.D. La. 1985), aff'd 791 F.2d 929 (5th Cir. 1986).

Indeed, the Trademark Trial and Appeal Board has allowed the registration of identical, and nearly identical, marks when the marks are used in different channels of trade. See, e.g., In re Albert Trostel & Sons Co., 29 U.S.P.Q.2d 1783, 1786 (T.T.A.B. 1993); In re Unilever Ltd., 222 U.S.P.Q. 981, 982-83 (T.T.A.B. 1984); In re Feseo Inc., 219 U.S.P.Q. 437, 438 (T.T.A.B. 1983); Chase Brass and Copper Co. v. Special Springs, Inc., 199 U.S.P.Q. 243 (T.T.A.B. 1978); Mobay Chemical Co. v. Standard Oil Co., 163 U.S.P.Q. 231, 238 (T.T.A.B. 1969); see also The United States Jaycees v. Commodities Magazine Inc., 2 U.S.P.Q.2d 1119, 1122 (N.D. Iowa 1987) (due to different trade channels, no likelihood of confusion between FUTURE magazine distributed by mail and not sold on newsstands and FUTURES magazine sold for commodities and options, distributed to subscribers).

Applicant's goods are sold in different trade channels than those goods described in Registration No. 2,475,007. The hotel and motel furniture described Registration No. 2,475,007, for the RHINO EDGE (and Design) mark are obviously marketed and sold to the hospitality industry. These goods necessarily reach their ultimate purchasers, hotels and motels, through specialty distribution chains. The polyurethane covered storage racks and cabinets described in the Application are for use by homeowners. Goods of the kind described in the Application are generally sold at hardware and home improvement supply retailers. See Affidavit of Jonathan M. Robertson at ¶ 3, 4, attached hereto as Exhibit B. Therefore, the goods described in Registration No. 2,475,007 and the goods described in the Application are distinctly different products that are sold in distinctly different trade channels.

Applicant's goods are sold in different trade channels than those goods described in Registration No. 1,698,407. The work tables, work benches, industrial shelving, and storage racks in Registration No. 1,698,407 for RHINO RACK are marketed to industrial customers for industrial usage. They are sold practically exclusively to industrial purchasers through specialized dealers and distributors of industrial storage products. See Robertson Aff. at ¶ 5, attached hereto as Exhibit B; Rapid Racks website, attached hereto as part of Exhibit A.

Goods like those described in the Application serve a very different purpose and are sold to different consumers in different places than the industrial goods described in Registration No. 1,698,407. The Applicant's polyurethane covered shelves, racks and cabinets are for home storage. Goods of this kind are primarily for use in home storage and are generally available to individual consumers at hardware and home improvement supply retailers. See Robertson Aff. at ¶ 3, 5, attached hereto as Exhibit B. Therefore, Registration No. 1,698,407 and the Application describe substantially different products that are sold in considerably different trade channels.

Applicant's goods are sold in different trade channels than those goods described in application serial number 78/644,962. The goods described in application serial number 78/644,962 are shelving for stereos and video equipment. The market for these goods is clearly narrow; the intended purchasers are seeking to install and/or display stereos, televisions, and related electronic devices. Such goods are undoubtedly purchased at retail stores specializing in the sale of audiovisual electronic equipment and related accessories. Goods such as polyurethane covered racks, shelves, and cabinets for home storage use are sold to different customers in different stores than audiovisual equipment shelving. Specifically, goods such as those described in the application are generally purchased by homeowners at

hardware and home improvement supply retailers. See Robertson Aff. at ¶¶ 3, 6, attached hereto as Exhibit B. Thus, the Applicant's goods are sold in very different trade channels than those described in application serial number 78/644,962.

The cases cited by the Examining Attorney are distinguishable.

The cases involving similar marks involved significantly different situations. The Examining Attorney supported its refusal by citing to several opinions addressing similarities between marks. For example, the Examining Attorney cited In re Concordia International Forwarding Corp., 222 U.S.P.Q. 355 (T.T.A.B. 1983), which held that common use of the mark "CONCORDIA" would create confusion. However, the Concordia case involved substantially similar products or services—i.e., air freight forwarding services and ship freight forwarding services—that might be encountered by the same customers. As set forth above, the present Applicant's products, and the purchasers thereof, are very different than those of the registrants discussed by the Examining Attorney.

The other cases involving similar marks also involved similar products, customers, and channels of distribution. See In re National Data Corp., 753 F.2d. 1056, 224 U.S.P.Q. 749 (10th Cir. 1985) ("THE CASH MANAGEMENT EXCHANGE" and "CASH MANAGEMENT ACCOUNT" held confusingly similar where both would refer to financial services); In re Dakin's Miniatures, 59 U.S.P.Q.2d 1593 (T.T.A.B. 1999) (common use of mark "DAKIN" held confusingly similar where it would refer to applicant's figurine collectibles and registrant's Christmas ornaments and full line of toys, and products were sold in same channels of trade and deemed to have the same intended customers); In re Appetito Provisions Co., Inc., 3 U.S.P.Q.2d 1553 (1987) ("APPETITO" held confusingly similar to "A APPETITO'S" and "A APPETITO'S INC" where former was for Italian sausage and

latter were for restaurant's serving Italian cuisine, and it could be fairly presumed that "registrant's restaurants specialize[d] in Italian sausage, the very product [the applicant sold]"); In re J.M. Originals, Inc., 6 U.S.P.Q.2d 1393 (1987) ("JM ORIGINALS" and "JM COLLECTIBLES" held confusingly similar where both would refer to lines of apparel); In re Mack, 197 U.S.P.Q. 755 (T.T.A.B. 1977) ("MAC" and "MACK" held confusingly similar because of the similarity and common distribution channels of the goods at issue: cigars and smokers' pipes); Amoco Oil Co v. Amerco, Inc., 192 U.S.P.Q. 729 (T.T.A.B. 1976) ("AMERCO" and "AMOCO" held confusingly similar where one was for automobile freight trailer and truck rental services and the other was used as trade name in advertising the sale of automotive products and services at service stations which also provided automobile freight trailer and truck rental services).

The cases addressing similar goods also involved significantly different situations. The Examining Attorney supported its refusal by citing to several opinions addressing similarities between goods. For example, the Examining Attorney cited to In re General Motors Corp., 196 U.S.P.Q. 574 (T.T.A.B. 1977), in which the Trademark Trial and Appeal Board was persuaded that the use of an identical mark, "STARFIRE," on automotive vehicles and on spare parts or accessories for automotive vehicles was likely to cause confusion. *Id.* at 575-76. However, in that case, there was a serious likelihood that, given the close relationship between vehicles and vehicle spare parts and accessories, prospective purchasers would assume that the manufacturer of the vehicles was also manufacturing and distributing the spare parts and accessories. The Examining Attorney also cited CPG Products Corp. v. Perceptual Play, Inc., 221 U.S.P.Q. 88 (T.T.A.B. 1983), which found that the use of "Shape Clues" for equipment sold as a unit for playing an early childhood educational game to develop visual closure skills

and "Clue" for equipment for use in playing a board game was likely to cause confusion. However, the applicant in CPG Products failed to show any differences between the intended purchasers of the goods or their channels of trade. Id. at 90;

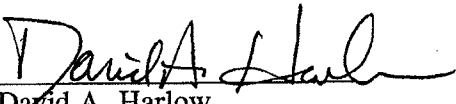
In the instant case, there is no close relationship or confusing similarity between polyurethane covered racks and cabinets for home use and hospitality furniture, major industrial warehouse shelving, or audiovisual equipment shelving. The present Applicant has amply demonstrated different purchasers of, and trade channels for, its goods. Accordingly, Applicant submits that decisions involving marks with different goods are more applicable. See, e.g., Victory Pipe Craftsmen, Inc. v. Faberge, Inc., 582 F.Supp. 551 (N.D.Ill. 1984) (no likelihood of confusion between CELLINI for pipes, tobacco, and related goods and CELLINI for men's colognes, soaps and other toiletries), and the cases cited therein.

Conclusion

Applicant submits that there is no confusing similarity between its RHINO GARAGE mark and marks shown in Registration Nos. 2,475,007 for RHINO EDGE (and Design) and 1,698,407 for RHINO RACK, and application serial number 78/644,962 for RHINO RACKS SYSTEM (and Design). The only similarity amongst these marks is the use of the common suggestive term "RHINO," and the other words in these marks distinguish them. Moreover, Applicant's mark describes very different goods that are sold in very different trade channels than those described in the other marks. Therefore, favorable action is requested.

Respectfully submitted this 21st day of December, 2006.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: 
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of
Rhino Linings USA, Inc.

Serial No.: 78/832,237

Filed: March 8, 2006

Mark: RHINO GARAGE

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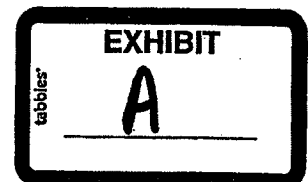
Examining Attorney: Ann Sappenfield

Law Office: 117

AFFIDAVIT OF JAMES T. HOLDEN

Affiant, being first duly sworn, deposes and says as follows:

1. My name is James T. Holden. I am General Counsel and Director of Legal Services for the Applicant Rhino Linings USA, Inc.
2. On December 19, 2006, I reviewed the internet website www.rapidrack.com (the "Rapid Rack Website"), a true and accurate printed copy of which is attached hereto as Exhibit A-1.
3. The Rapid Rack Website indicates that it is posted by Rapid Rack Industries, Inc. Rapid Rack Industries, Inc. is also the owner of Registration No. 1,698,407 for the mark RHINO RACK in connection with "work tables with and without wheels, work benches, industrial shelving, large storage racks, and component parts therefor" in International Class 20.
4. The Rapid Rack Website demonstrates the goods sold by the owner of the RHINO RACK mark, which include battery racks, tire racks, bulk storage shelving, mezzanine storage, mobile aisle systems, record and archive storage shelving, steel decking, and metal stairways.




5. The Rapid Rack Website tends to indicate that these goods are primarily constructed of metal, are produced and marketed as large, bulk storage systems and related items for heavy-duty industrial use, and are distributed to businesses, stores, and/or warehouses.

Further affiant sayeth not.

Signature page attached.

Sworn to and subscribed this 20 day of December, 2006.


James T. Holden

STATE OF CALIFORNIA:

COUNTY OF SAN DIEGO:

I, BARBARA R. LINKER, a Notary Public of the aforesaid County and State, do hereby certify that James T. Holden personally appeared before me on this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal this 20 day of December, 2006.




Notary Public

My Commission Expires:

05-23-08

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of)	
Rhino Linings USA, Inc.)	
Serial No.: 78/832,237)	Examining Attorney: Ann Sappenfield
Filed: March 8, 2006)	Law Office: 117
Mark: RHINO GARAGE)	Deposit Account No.: 502843

AFFIDAVIT OF JONATHAN M. ROBERTSON

Affiant, being first duly sworn, deposes and says the following:

1. My name is Jonathan M. Robertson. I am Senior Vice President, General Counsel & Corporate Secretary for RSI Home Products Management, Inc. ("RSI").
2. Pursuant to a license agreement, Rhino Linings USA, Inc. has granted RSI and its affiliates and subsidiaries certain rights in connection with the goods described in International Class 20 of Application Serial No. 78/832,237.
3. The goods described in International Class 20 of Application Serial No. 78/832,237 for the mark RHINO GARAGE are "polyurethane coated furniture for home storage use in garages, basements, utility rooms and storage sheds, namely shelving, cabinets and storage racks" (hereinafter "Applicant's goods "). Applicant's goods provide general storage for individual households. Goods of this kind are generally sold to, and purchased by, individual homeowners at hardware stores and other home improvement supply retailers.
4. Applicant's goods are very different than the traditional hotel and motel furniture described in Registration No. 2,475,007 for the RHINO EDGE (and Design) mark. Applicant's goods are not furniture in the traditional sense, are not for use by hotels and motels, and will not



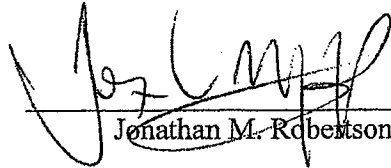
distributed in hotel and motel supply trade channels like the goods described in the RHINO EDGE Registration.

5. Applicant's goods are very different than the large, heavy duty industrial work tables, work benches, industrial shelving, large storage racks, and component parts described in Registration No. 1,698,407 for RHINO RACK. Applicant's goods are smaller, are manufactured differently, incorporate a polyurethane coating, and provide for a very different type of storage, namely, storage by individual homeowners. In addition, unlike the goods described in the RHINO RACK Registration, Applicant's goods are not for major commercial storage, and do not provide mass storage for warehouses and businesses.

6. Applicant's goods are very different than the stereo and video equipment shelving described in Application Serial No. 78/644,962 for the RHINO RACKS SYSTEM (and Design) mark. Applicant's goods are not designed to store or display audiovisual devices, and Applicant's shelves, racks, and cabinets are larger, heavier-duty items that provide bulk home storage. Unlike the goods in the RHINO RACKS SYSTEM Application, the goods in the present Application will not be offered for sale in stores which specialize in audio and video equipment and are not likely to be purchased by consumers in connection with the display of televisions, stereos, and related equipment.

Further affiant sayeth not.

Sworn to and subscribed this 19th day of December, 2006.

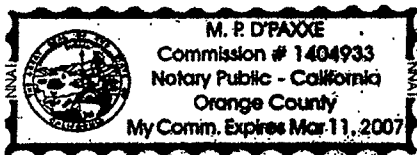

Jonathan M. Robertson


STATE OF CALIFORNIA:

COUNTY OF ORANGE:

I, M. P. D'Paxxe, a Notary Public of the aforesaid County and State, do hereby certify that Jonathan M. Robertson personally appeared before me on this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal this 19th day of December, 2006.




Notary Public

My Commission Expires: Mar. 11, 2007